

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 12.07.2007

Coram

The Honourable Mr. Justice M. CHOCKALINGAM

C.R.P.NPD.Nos.1095 and 1096 of 2006
and
M.P.Nos.1 & 2 of 2007 in C.R.P.NPD.No.1095/06

G.Krishnamurthy Petitioner in both CRPs/Tenant

...vs...

S.K.Balasundaram Respondent in both CRPs/Landlord

Civil Revision Petitions against the orders and decreetal orders dated 13.04.2006 in RCA Nos.846 of 2002 and 133 of 2004 respectively on the file of the VII Small Causes Court (Appellate Authority), chennai, confirming the orders and decreetal orders dated 29.08.2002 and 08.01.2004 in RCOP Nos.406 of 2001 and 1265 of 2003 respectively on the file of XIV Judge Court of Small Causes, Madras.

For Petitioner : Mr.T.Viswanatharao
For Respondent : Mr.A.V.Arun

O R D E R

This order shall govern the two C.R.P.NPD.Nos.1095 and 1096 of 2006 which challenge two Judgments of the Rent Control Appellate Authority, VII Court of Small Causes made in R.C.A.Nos.846 of 2002 and 133 of 2004 respectively. These two RCAs arose from two orders of the Rent Controller viz., XIV Court of Small Causes made in R.C.O.P.Nos.406 of 2001 and 1265 of 2003 respectively. The first R.C.O.P.No.406 of 2001 was filed by the landlord seeking eviction on the ground of willful default. The second R.C.O.P.No.1265 of 2003 was filed by the tenant seeking deposit of the rental arrears in Court. The Rent Controller while ordering eviction in the first RCOP, dismissed the second RCOP. Aggrieved against the said orders, the tenant preferred appeals referred to above and has suffered dismissal of those appeals, against which these two revisions have been brought forth by the tenant.

2. The Court heard the learned counsel on either side.

3. Concededly, the respondent herein is the owner of the property mentioned in the rental applications, which is situate at Door No.80, Bazaar Road, Saidapet, Madras. The revision petitioner would contend that originally he was paying rent at Rs.450/-. There were originally proceedings which culminated by the orders of the Apex Court, where the rent was fixed at Rs.600/- p.m. and thereafter he undertook to make payment at Rs.600/- p.m. The landlord tenant relationship is an admitted fact. Originally, the revision petitioner/tenant filed R.C.O.P.No.361 of 1998 for depositing all the rental arrears in Court and there it was agreed by the parties that the petitioner/tenant should make the payment directly and the respondent/landlord should also receive and pass on receipts. With that understanding the said R.C.O.P.No.361 of 1998 was closed. While the matter stood thus, the landlord filed R.C.O.P.No.406 of 2001 alleging there was willful default in making payment of rental from October 2000 to January 2001 and thus he had committed willful default in payment of rental and there was no tender at all. Under such circumstances, considering the willful default, he was liable to be evicted from the premises. The said petition was resisted to by the revision petitioner/tenant stating that from the month of October 2000, for every month, he was making tender, but the same was being evaded. Under such circumstances, there arose a necessity for sending it by money order and the money order coupons were returned "not found". While the matter stood thus, the landlord has rushed to the Court by filing R.C.O.P.No.406 of 2001 on the ground of willful default, but it was not so and hence that petition was to be dismissed. While the first R.C.O.P.No.406 of 2001 was pending in the Court, the tenant filed R.C.O.P.No.1265 of 2003 for depositing the rents from March 2003 to July 2003. That petition was also contested by stating that there was no need for making such a petition, pending the proceedings. Both the petitions were taken up for enquiry by the Rent Controller and on enquiry the petition made by the landlord was allowed and eviction was ordered and the other petition filed by the tenant was dismissed. Aggrieved against those orders, two appeals were preferred by the tenant, which also met the same fate. Hence, the tenant brought forth the present Civil Revision Petitions before this Court.

4. Advancing the arguments on behalf of the revision petitioner/tenant, the learned counsel would submit that in the instant case, the whole case of the landlord was that there was default in payment of rental from October 2000 to January 2001, for a period of four months. But, in respect of those four months period, money order coupons were produced before the

Court which would clearly indicate that he has exercised more care in sending the rent through money order. In the given case, it is averred even in the counter clearly. The tenant has been examined as R.W.1, wherein he has categorically stated that rental amounts were tendered, but there was evasion on the part of the landlord. Under such circumstances, he was compelled to send it by money order and even the money order coupons are produced, which would clearly indicate "not found" and that would further indicate the evasion and thus there was no default much less willful default. But even after observing that those money order coupons were taken and they were perused, the Appellate Court has also affirmed the order of the Rent Controller recording willful default which cannot be sustained and in the instant case when there was a relationship between the parties concerned, there was no other go except by sending the rents through money orders. It is true that there was an understanding between the parties concerned that payment must be made directly in the earlier R.C.O.P.No.361 of 1998. But it does not mean that the rents should be tendered in person. It can also be made through money orders and it has been done, but evaded by the opposite party. Under such circumstances, the tenant cannot be found fault, thereby he either avoided or committed default, much less willful default. Under such circumstance, the petition seeking eviction should have been dismissed.

5. Added further the counsel that when there was rental payment every month, when the matter is pending, there was refusal to receive the rents. There arose the necessity first for sending the rents through money order for a period of ten months. Since it was continuously refused, there arose the necessity for filing R.C.O.P.No.1265 of 2003 for depositing the rents from March 2003 to July 2003. Under such circumstances, the totality of the facts and circumstances of the case would clearly indicate that there was no default much less willful default. As the tenant has taken all steps for making payment, when there was evasion on the part of the landlord, he could not be blamed for any default on the part the tenant. In support of his contention, the learned counsel relied on the decision of the Apex Court in the case of Dr.Brahmanand vs. Kaushalya Devi and another reported in AIR 1977 Supreme Court 1198.

6. In answer to the above contentions, the learned counsel for the respondent would submit that both the authorities have concurrently found that there was willful default. It is true that the period for which the default was committed was from October 2000 to January 2001, for a period of four months. In the instant case, originally a petition was filed wherein it was understood between the parties to the effect that monthly rental

must be paid directly. However, no direct payment was made or tendered. Sending the rents by money order by the tenant when proceedings are pending is not the one of what is expected under the provisions of the Act. When there was refusal or evasion, he should have immediately sent a notice and following the same, if the contentions of the notice are not followed, thereafter he can send it by money order and even then if there was refusal, he can go before the Court. In the instant case, there was no tender or refusal or evasion, but he has made payment without any notice, by money order. All the money order coupons produced before the Court would clearly indicate that there was no evasion at all as the authority below has not been satisfied with the same. There was no tender as expected of him earlier, which would indicate the indifferent attitude on the part of the tenant and it is also quite evident from the filing R.C.O.P.No.1265 of 2003 for depositing the rental pending R.C.O.P.No.406 of 2001 for eviction. Added circumstances is that even those amounts during the pendency of the proceedings R.C.O.P., R.C.A. and also revision, have not been properly made. As such the contention that every month rent was tendered but refused to be received cannot be accepted. If there was any refusal like that, it should have been brought to the notice of the Court immediately, but not so. Pending the proceedings, the rents ought to have been paid to the credit of R.C.O.P and R.C.A by the tenant into the Court. Instead, the tenant has taken another RCOP which is now pending in the lower Court. This would go to show the indifferent and recalcitrant attitude on the part of the tenant. Under such circumstances, the orders of the authorities below have got to be sustained.

7. The Court paid the anxious consideration on the submissions made by the learned counsel on either side.

8. The gist of the case of the landlord before the Courts below was that there was willful default committed by the tenant from October 2000 to January 2001, for a period of four months. Ordinarily, in a given case one month rental arrears can be construed as willful default and the arrears of rent for number of months can be construed as not willful. But the circumstances have got to be taken into consideration in deciding whether a particular arrears made is willful or not. In the instant case, it is an admitted position that originally the tenant filed R.C.O.P.No.361 of 1998, wherein it was understood between the parties and also orders were passed to the effect that thereafter the tenant must pay the rental directly and thus it would make clear that thereafter it should have been made directly. At this juncture, it is to be pointed out that thereafter rents have been paid directly and for the period from October 2000 to January 2001, according to the

tenant, he made tenders, but it was evaded and on that evasion he sent it by money orders and they were all returned as "not found". Now at this juncture, the procedure that has been followed would clearly indicate the indifferent attitude on the part of the tenant for more reasons than one. While it was understood in the earlier R.C.O.P. for making payment directly and it has been followed for number of months, there could not be any impediment for making the payment directly from October 2000 to January 2001. Consequently, if there was any evasion, the next step what is available under the provisions of the Act is to issue a notice there for, stating the reasons and if there was any further refusal, then he could have brought to the notice of the Court. In the instant case, though the tenant has given evidence to the effect that the house of the parties are nearby, he would not have felt any difficulty in tendering it directly. But he has not done so and now sending it by way of money order was not the one step expected for tendering the same.

9. Now the contention put forth by the learned counsel for the revision petitioner is that the understanding that he should make payment directly as found in the earlier order made in R.C.O.P.No.361 of 2001, does not mean that it was to be paid person to person. That contention cannot be countenanced as such. At that point of time there was no necessity for making the payment by way of money order in so far as the period from October 2000 to January 2001, when earlier payment was made directly following the earlier order for number of months. Therefore the contention that there was tender, but it was evaded and thereafter money orders were sent and it was also returned as 'not found', cannot be factually or legally sustainable since as stated above it was not so. Therefore, under the circumstances, even for those four months rental, the Court is of the considered opinion that it should be clearly termed only as willful default. Added circumstances is that even at the time of the pending proceedings in R.C.O.P.No.406 of 2001, there was a payment at a time for 10 months' arrears in Court, which has been acceded to by both the authorities below. Now the contention that every month payment was made but it was refused by other side cannot be accepted for the simple reason that when a case was brought forth before the Court on the ground of willful default and when there was rental arrears tendered and if refusal was made, he could have produced all the facts before the authority below and suitable orders would have been obtained, but not done so. Adding circumstances is that even pending RCA and CRP, the amounts have not been paid. Therefore, it is quite clear that it has not been paid regularly. The crowning circumstance is that pending RCOP for eviction in R.C.O.P.No.406 of 2001, that too on the ground of

willful default, the tenant has gone to the extent of filing R.C.O.P.No.1265 of 2003 for depositing the arrears of rental from March 2003 to July 2003. It would be quite evident that pending proceedings in Court he made payment for some period before the authority concerned, and for the rest of the period, he goes by way of another RCOP. All would go to show the deliberate attitude on the part of the tenant in not making the payment. It is needless to state that in a given case, the Court has to take into consideration the subsequent conduct of the tenant in not making the payments regularly in a case of willful default. The settled position is that it has to be construed as willful default and the circumstances noticed by the Court would clearly indicate the conduct of the tenant which in the opinion of the Court is indifferent, evasive and recalcitrant, which would suffice for sustaining the order of eviction. Accordingly, it is sustained and both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10. Pending two Civil Revision Petitions, making deposit of rental arrears by way of another RCOP cannot be countenanced. Under such circumstances, the said RCOP comes to an end by an order of this Court for eviction. As a result, the said RCOP requires an order of dismissal and accordingly, it is dismissed.

11. At this juncture, the learned counsel for the revision petitioner would submit that the tenant is running a grocery shop for more than 5 decades and he has to find a suitable accommodation to run his business and therefore sufficient time may be granted. The Court heard the learned counsel for the respondent/landlord on the above submissions. Taking into consideration the facts and circumstances of the case, the Court feels that 9 months time has got to be given to vacate and handover possession enabling the tenant to shift his place to a suitable accommodation and accordingly it is granted. He has to file an affidavit of undertaking within a period of two weeks.

WEB COPY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

rg

To

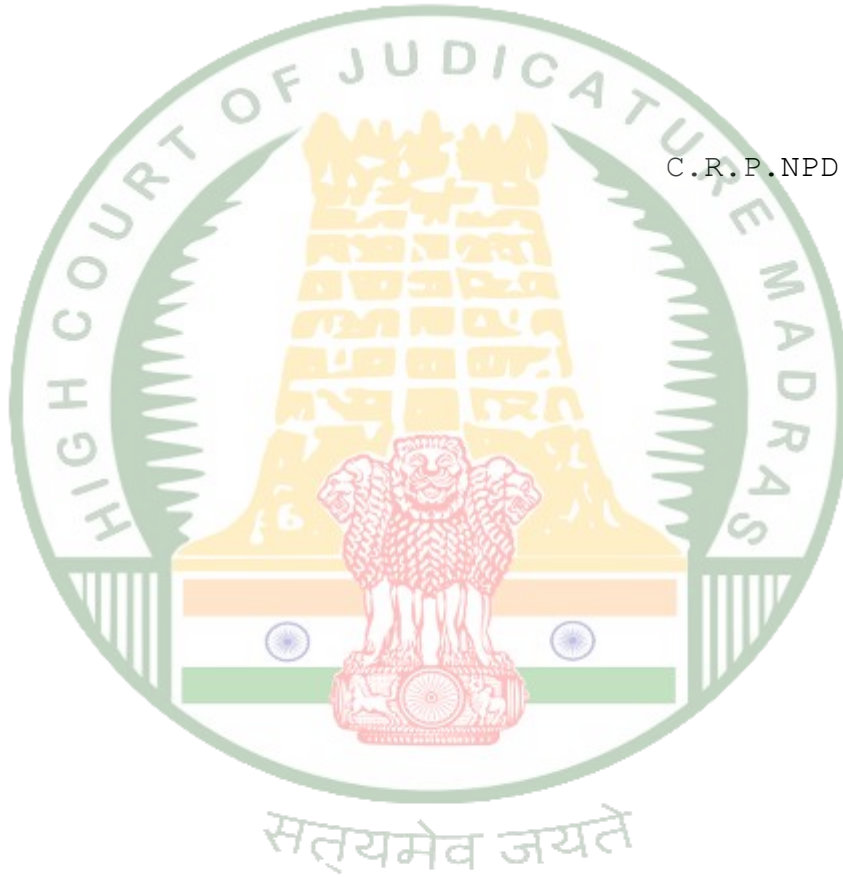
1. VII Small Causes Court, Chennai
2. XIV Court, Small Causes, Madras.

+2ccs to M/s.A.V.Arun, Advocate Sr 42810

+2ccs to Mr.T.Viswantha Rao, Advocate Sr 42354, 42353

AKR (CO)
km/7.8.

C.R.P.NPD.Nos.1095 and
1096 of 2006



WEB COPY